THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 5726 of 1998

DATE: 22-03-2007

Between :

1. The Forest Range Officer,
Kodur Range, Kodur,
Kadapa District and 2 others. … Petitioners

And

Smt. Jaswant Kaur Goba and another … Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO. 5726 of 1998

ORDER:

The first respondent herein, is the owner of a lorry bearing No. AMN 3112 which was intercepted and seized by the Forest Range Officer, Kodur on 24-04-1995 while coming from Madhavampadu village along with Red Sandal logs being transported in it on the ground that the driver, cleaner and another person sitting in the cabin failed to produce any permit. The seized lorry along with the forest produce was produced before the Divisional Forest Officer, Rajampet, Kadapa District, who is the authorized officer under Section 44 (2) (A) of the Andhra Pradesh Forest Act, 1967(for short 'the Act'). Two persons who were following the lorry on a motor cycle were also taken into custody and on the basis of their statements the first respondent herein was issued a show cause notice to show cause as to why the vehicle in question should not be confiscated for committing the alleged forest offence.

At that stage the first respondent herein filed W.P.No.8972 of 1995 and pursuant to the orders passed by this Court, the Divisional Forest Officer, Proddutur was appointed as Enquiry Officer. After conducting due enquiry, the Divisional Forest Officer, Proddutur ordered confiscation of the lorry along with the logs of Red Sandal holding that the said lorry was involved in the commission of an offence of transport of illicit Red Sandal with the knowledge of the lorry driver and the cleaner who are the agents of the lorry owner. Aggrieved by the same, the first respondent herein/owner of the lorry filed CMA.No.21 of 1996 in the Court of the District Judge, Kadapa.

On re-appreciation of the material on record, learned District Judge, Kadapa by Judgment dated
15-12-1997 allowed the appeal and set aside the order of confiscation passed by the Divisional Forest Officer, Proddutur. Hence, this writ petition by the Forest Department seeking a writ of certiorari to quash the judgment dated 15-12-1997 in CMA.No.21 of 1996.

I have heard the learned Government Pleader for Forest appearing for the petitioners and the learned counsel appearing for the first respondent.

Section 44 of the Act provides for seizure of the property liable to confiscation and procedure thereupon. Whereas sub-section(1) of Section 44 provides for seizure of forest produce together with all tools, vehicles and etc., where there is a reason to believe that a forest offence has been committed in respect of any timber or forest produce, Sub-section (2) (A) of Section 44 of the Act provides for confiscation of such forest produce as well as the tools, vehicles and etc. Sub-section (2) (B) of Section 44 of the Act mandates that the person from whom the property is seized is given an opportunity of making his representation in writing and also an opportunity of being heard in the matter before passing an order of confiscation. Sub-section (2) (C) of Section 44 of the Act further provides that no order of confiscation shall be made if the owner there of proves to the satisfaction of the authorized officer that it was used in carrying the property without his knowledge or connivance or the knowledge or connivance of his agent, if any, or the person in charge of the vehicle in committing the offence and that each of them had taken all reasonable and necessary precautions against such use.

Having considered the scope and object of sub-section 2(C)of Section 44 of the Act, a Full Bench of this Court in ***Sub-Divisional Forest Officer, Chennur v. Vijay B.Gulati***[1] held as under:

> "The words referable to the owner of the vehicle and the word 'or' used therein are all disjunctive and cannot be read in conjunction. They do no connote that all of

them have to collectively prove their innocence with regard to want of knowledge or consent of commission of forest offence. The words "…. That each of them had taken all reasonable and necessary precautions against such use" cannot be understood to mean that all of them have to prove their want of knowledge or innocence collectively, but (not) individually in any manner indicated above. If the driver accompanying the vehicle proves his innocence, question of referring the matter to either the owner or his agent does not arise at all. For criminal offence, anyhow the person-in charge of the vehicle will be proceeded against, but in so far as civil consequences are concerned, it is the owner who loses the property and if the commission of forest offence had taken place without his knowledge or consent and if he had no role to play in the said offence, then it would highly be unreasonable to punish him by confiscation of his vehicle, which would be arbitrary violating Article 14 of the Constitution of India and also will be an unreasonable restriction of his fundamental right guaranteed under Article 19(1)(g) of the Constitution and ultimately it may breach the constitutional guarantee under Article 300-A. Authority of law does not mean enactment of law providing for confiscation, but such enactment should conform to the fundamental rights guaranteed in Part II of the Constitution of India as also the constitutional guarantee under Article 300-A. May be contextually the word 'or' may have to be read as 'and' and sometimes the word 'and' may have to be read 'or'. But the above legal provision involved for interpretation in the instant case can be given a plain meaning understanding 'or' as 'or' only and fastening liability of proving innocence on

> the owner, agent and driver not collectively but individually and even if there is a failure of proving innocence on the part of the Driver or Agent and if the owner proves innocence, his vehicle cannot be confiscated. It is sufficient if the owner proves innocence, his vehicle cannot be confiscated. It is sufficient if the owner proves that at the time when the vehicle was entrusted to his agent or driver, if he was not accompanying, to see that all legal formalities for the transportation of the vehicle were complied with and he had entrusted the transportation to the agent or driver by taking all reasonable precautions and once such steps have been taken by the owner, his responsibility and liability ceases and when vehicle leaves his control and is in the control of the agent or the driver and if the said agent or driver commits any offence like the one in the instant case, then such owner cannot be made liable for confiscation of his vehicle, confiscation of a vehicle which is used for unlawful purposes in normal course can be ordered only if the owner connived or had the knowledge of the unlawful use of the vehicle or that his agent did only such things as the owner desired and thus agent's culpability was shared by the owner and in the case of the servant namely the driver in particular only when it is shown that he was carrying out the desires of the owner."

In the case on hand, the specific case of the first respondent/owner of the vehicle was that she had no knowledge about the alleged transport of the forest produce. It was also pleaded that she had taken all precautions while entrusting the lorry to the driver not to transport any forest produce in the vehicle. Even according to the Divisional Forest Officer, Proddutur, who ordered confiscation, absolutely no case was made out to show that the owner or the agent

had any knowledge of transporting the forest produce in the lorry in question.

Admittedly, neither the first respondent-owner of the lorry nor her agent was present at the time of the offence in the vehicle. It is also not in dispute that they are residents of Culcutta and Assam respectively, whereas the Forest produce was being transported in the State of Andhra Pradesh. Having regard to the said undisputed facts, the learned District Judge, Kadapa recorded a finding that the owner of the vehicle or his agent had no knowledge about the transportation of the forest produce. The said finding which is based upon proper appreciation of the material on record cannot be held to be erroneous and does not warrant interference.

In the light of the said finding the learned District Judge has rightly concluded that the vehicle is not liable for confiscation. The said order which is in consonance with the principles of law laid down by the Full Bench of this Court warrants no interference on any ground whatsoever.

By virtue of the interim order passed by this Court, the vehicle in question was released during the pendency of this writ petition accepting the bank guarantee furnished by the first respondent for a sum of Rs.50,000/-.

The learned counsel for the first respondent submitted that the said bank guarantee is still subsisting. Now that the order of the learned District Judge setting aside the order of confiscation is confirmed, the first respondent is entitled for release of the bank guarantee without any security.

The writ petition is accordingly dismissed with a direction to the petitioners to return the Bank Guarantee to the first respondent. No costs.

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G. ROHINI, J.

Date:22-03-2007
KLP

[1] 1997 (6) ALT 238